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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/600,461	06/23/2003	Lorenzo Cortelazzo	37647/GM/br	7264

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MODIANO & ASSOCIATI  
Via Meravigli, 16  
Milano, 20123  
ITALY

EXAMINER
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NAGPAUL, JYOTI

ART UNIT	PAPER NUMBER
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1743

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/08/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/600,461

Applicant(s)

CORTELAZZO, LORENZO

Examiner

Jyoti Nagpaul

Art Unit

1743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

Amendment filed on December 11, 2006 has been acknowledged. Claims 1-20 are pending.

#### ***Response to Amendment***

Rejection of Claims 1-20 as being unpatentable over Hayes (US 5589400) in view of Wendt (US 4209923) has been *modified* in light of applicant's amendments.

The amendment filed on December 11, 2006 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: "shaped as a flange", "flange shaped", and "flange supporting base"

Applicant is required to cancel the new matter in the reply to this Office Action.

#### ***Specification***

The amendment filed on December 11, 2006 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: "shaped as a flange", "flange shaped", and "flange supporting base"

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Applicant is required to cancel the new matter in the reply to this Office Action.

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. **Claims 1-20** are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The added material which is not supported by the original disclosure is as follows: "shaped as a flange", "flange shaped", and "flange supporting base".

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

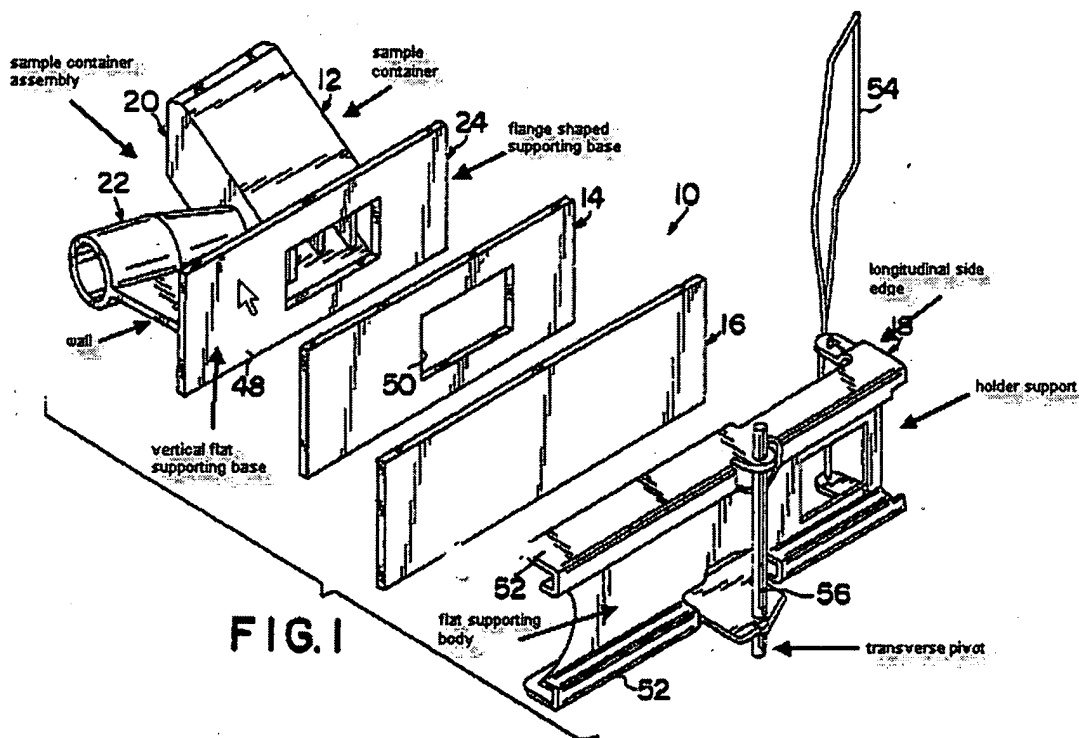
1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. **Claims 8-20** are rejected under 35 U.S.C. 103(a) as being unpatentable over Hayes (US 5589400) in view of Merrick (US 5392913).

Hayes teaches a sample container assembly in centrifuges. The assembly comprises a holder support and the sample container assembly, respectively, being made independent from each other and detachably connectable in use. The sample container (12) assembly being a unitary plastic body comprising a sample container with a vertical flat flange shaped supporting base (24) suitable for insertion in the holder support for supporting the sample container in an upright position upon mounting

thereon in the cytocentrifuge, a slide, and a filtering card (See Col. 5, Lines 19-21) (See Figures 1 and 5). Hayes teaches a transverse pivot protruding from the supporting body and made monolithic therewith for fixing the support to the cytocentrifuge. (See figure below)



Hayes fails to explicitly teach the disposable holder being a single monolithic molded plastic element.

Hayes further fails to teach clamp means formed on the edges and at least one perpendicular containment tab formed on the lower edge, the clamp means and

containment tab made monolithic with the flat supporting body of the holder support for detachably accommodating and retaining, in succession, the slide, the filtering card and the flange shaped base of the container.

Hayes further fails to teach a plastic transverse pivot. Hayes further fails to teach elastic means for taking up, upon accommodation of the slide, filtering card and container base, mounting plays, the elastic means being made integral with the supporting body in a region where the slide rests.

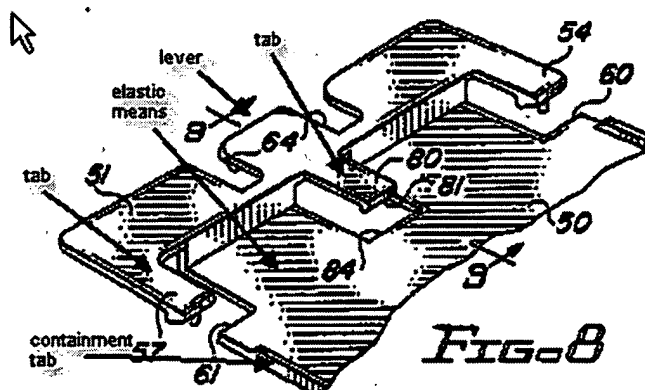
Hayes further fails to teach the disposable holder support comprises a flat supporting body provided with a lower edge and with longitudinal side edges that protrude therefrom so as to form a seat that detachably accommodates in use the slide, filtering card and flange shaped supporting base of the container.

Hayes further fails to teach clamp means are constituted by two mutually opposite hook-shaped tabs, which are sized so as to retain between ends thereof and the supporting body the slide, the filtering card and the supporting base of the container, the hook shaped tabs comprising respective levers that extend towards a rear part of the supporting body.

Hayes further fails to teach the elastic means for taking up the mounting plays is constituted by a longitudinal bridge element that protrudes from a part of the supporting base where the slide rests, the bridge element being shaped as a leaf spring.

Merrick teaches clamp means formed on the edges and at least one perpendicular containment tab formed on the lower edge, the clamp means and containment tab made monolithic with the flat supporting body of the holder support.

Merrick further teaches elastic means for taking up, upon accommodation of the slide, filtering card and container base, mounting plays, the elastic means being made integral with the supporting body in a region where the slide rests. Merrick further teaches clamp means are constituted by two mutually opposite hook-shaped tabs, which are sized so as to retain between ends thereof and the supporting body the slide, the filtering car and the supporting base of the container, the hook shaped tabs comprising respective levers that extend towards a rear part of the supporting body. (See Figure below)



It would have been obvious to a person of ordinary skill in the art to modify the device of Hayes to provide a support holder being a single monolithic molded plastic element and a plastic transverse pivot in order to save cost on materials and provide a simpler ready to use device for treating biological materials. Also, See also In re Leshin, 227 F.2d 197, 125 USPQ 416 (CCPA 1960) (selection of a known plastic to make a container of a type made of plastics prior to the invention was held to be obvious)



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It would have been obvious to a person of ordinary skill in the art to modify the device of Hayes to provide clamp means formed on the edges and at least one perpendicular containment tab formed on the lower edge, the clamp means and containment tab made monolithic with the flat supporting body of the holder support and clamp means are constituted by two mutually opposite hook-shaped tabs, which are sized so as to retain between ends thereof and the supporting body the slide, the filtering car and the supporting base of the container, the hook shaped tabs comprising respective levers that extend towards a rear part of the supporting body in order to further facilitate insertion and removal of the slide, filtering card and supporting base of the container.

### ***Allowable Subject Matter***

Claims 1-7 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 1st paragraph, set forth in this Office action.

With respect to Claim 1, prior art fails to teach the corresponding horizontal connection channel extending along the wall and away from and perpendicularly to the flange shaped supporting base in combination with the recited elements in Claim 1.

### ***Response to Arguments***

Applicant's arguments filed on December 11, 2006 has been acknowledged. Applicant's argue that "the support being formed from a single element made of molded

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plastic material" does not appear to be in accordance with the disclosure of Hayes.

Examiner has addressed this issue in the rejection above. With respect to applicant's

"flange shaped supporting base" this has been addressed in the rejection above.


### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jyoti Nagpaul whose telephone number is 571-272-1273. The examiner can normally be reached on Monday thru Friday (8:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JN

  
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